

UNITED STATES DISTRICT COURT

DISTRICT OF

VERMONT

UNITED STATES OF AMERICA

DEFENDANT'S
EXHIBIT AND WITNESS LIST

V.

DONALD FELL

Case Number: 5:01-cr-12-01

PRESIDING JUDGE Geoffrey W. Crawford					PLAINTIFF'S ATTORNEY S. Jimenez, R. Burns & W. Darrow	DEFENDANT'S ATTORNEY M. Burt, K. DeWolfe & L. Rogers
TRIAL DATE (S) 7/11/2016 - 7/21/2016					COURT REPORTER Anne Henry	COURTROOM DEPUTY Pamela Lane
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
	A				Exhibits of Witness Craig Haney	
	A1	7/11/2016	x	x	Curriculum Vitae of Craig Haney	
	A2	7/11/2016	x	x	Fed. R. Crim. P. Rule 16 Report, 6/1/2016	
	A3	7/11/2016	x	x	Publication (1980): Juries & the Death Penalty: Readdressing Witherspoon Question	
	A4	7/11/2016	x	x	Publication (1981): Death Qualification as Biasing Legal Progress	
	A5	7/11/2016	x	x	Publication (1984): Editor's Introduction, Law & Human Behavior, Vol. 8, Nos. 1/2	
	A6	7/11/2016	x	x	Publication (1984): Epilogue: Evolving Standards & the Capital Jury	
	A7	7/11/2016	x	x	Publication (1984): Postscript re: Grigsby v. Mabry (8/5/1983)	
	A8	7/11/2016	x	x	Publication (1984): Examining Death Qualification: Further Analysis of the Process Effect	
	A9	7/11/2016	x	x	Publication (1984): Selection of Capital Juries: Biasing Effects of the Death-Qualification Process	
	A10	7/11/2016	x	x	Publication (1986): Neither Tentative nor Fragmentary: Verdict Preference of Impaneled Felony Jury	
	A11	7/11/2016	x	x	Publication (1993): Capital Punishment & Values: People's Misgivings & Court's Misperceptions	
	A12	7/11/2016	x	x	Publication (1994): Modern Death Qualification: New Data on Its Biasing Effects	
	A13	7/11/2016	x	x	Publication (1996): Life Under Wainwright v. Witt: Juror Dispositions & Death Qualification	
	A14	7/11/2016	x	x	Publication (1998): Impact of Juror Attitudes-Death Penalty on Juror Evaluations of Guilt & Punishm	
	A15	7/11/2016	x	x	Publication (2000): The Changing Nature of Death Penalty Debates	
	A16	7/11/2016	x	x	Publication (2003): Mental Health Issues in Long-Term Solitary & Supermax Confinement	
	A17	7/11/2016	x	x	Publication (2003): Raising Considerations: Public Opinion & Fair Application of Death Penalty	
	A18	7/11/2016	x	x	Publication (2005): Absolute Certainty and the Death Penalty	
	A19	7/11/2016	x	x	Publication (2005): Death by Design: Capital Punishment as a Social Psychological System	
	A20	7/11/2016	x	x	Publication (2005): Tribunals Organized to Convict: Searching for a Lesser Evil (U.S. v. Green)	
	A21	7/11/2016	x	x	Publication (2007): Reassessing the Racial Divide in Support for Capital Punishment	

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

EXHIBIT AND WITNESS LIST – CONTINUATION

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	A22	7/11/2016	x	x	Publication (2008): Death Qualification of Juries (Encyclopedia of Law & Psychology)
	A23	7/11/2016	x	x	Publication (2011): Impact of Information on Death Penalty Support, Revisited
	A24	7/11/2016	x	x	Publication (2007): White Perceptions of Whether African Am. & Hispanics are Prone to Violence
	A25	7/11/2016	x	x	Publication (2015): The Death Penalty (APA Handbook of Forensic Psychology)
	A26	7/11/2016	x	x	Publication (2015): Hierarchical Models for Estimating State & Demographic Trends
	A27	7/11/2016	x	x	Bureau of Prisons Report: Operation & Security of the Special Confinement Unit (6/25/2015)
	A28	7/11/2016	x	x	Letter to BOP: Conditions at the Special Confinement Unit (SCU) at USP-Terre Haute (9/18/2012)
	A29	7/11/2016	x	x	Photographs of USP-Terre Haute SCU (2/22/2012) re: Roane Incident
	A30	7/11/2016	x	x	Publication (2011): Mapping Racial Bias of White Male Capital Juror: Jury Composition
	A31	7/11/2016	x	x	Power Point presentation of Craig Haney
	A32	7/11/2016	x	x	U.S. DOJ Report & Recommendations Concerning Use of Restrictive Housing (Jan. 2016)
	A33	7/11/2016	x	x	U.S. DOJ Report & Recommendations Concerning Use of Restrictive Housing - Final Report
	A34	7/11/2016	x	x	U.S. DOJ Letter - Use of Solitary Confinement on Prisoners with MI and/or ID (Feb. 24, 2014)
	B				Exhibits of Witness Thomas Reidy
	B1	7/12/2016	x	x	Curriculum Vitae Thomas Reidy
	B2	7/12/2016	x	x	Expert Report - 3/30/2016
	B5	7/12/2016	x	x	Federal Bureau of Prisons - Homicides, Fiscal Years 2002-2013
	B6	7/12/2016	x	x	Master List of Bureau of Prisons - Homicides (CD)
	B7	7/12/2016	x	x	Publication (1998): Antisocial Personality Disorder & Psychopathy: Diagnostic Dilemmas
	B8	7/12/2016	x	x	Publication (2005): Is Death Row Obsolete: A Decade of Mainstreaming Death-Sentenced Inmates
	B9	7/12/2016	x	x	Publication (2007): Assertions of Future Dangerousness at Federal Capital Sentencing
	B10	7/12/2016	x	x	Publication (2009): Capital Jury Decisionmaking - Limitations of Predictions of Future Violence
	B11	7/12/2016	x	x	Publication (2010): Life & Death in the Lone Star State: Three Decades of Violence Predictions
	B12	7/12/2016	x	x	Publication (2012): Community Violence to Prison Assault: Test of Beh. Continuity Hypothesis
	B13	7/12/2016	x	x	Publication (2013): Probability of Criminal Acts of Violence: Test of Jury Predictive Accuracy
	B14	7/12/2016	x	x	Publication (2015): Wasted Resources & Gratuitous Suffering: Failure of Security Rationale

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	B16	7/12/2016	x	x	Power Point presentation of Thomas Reidy
	B17	7/12/2016	x	x	Publication (1979): The Base-Rate Fallacy in Probability Judgments
	D				Exhibits of Witness Michael Radelet
	D1	7/12/2016	x	x	Curriculum Vitae of Michael Radelet
	D2	7/12/2016	x	x	Expert Report - 5/30/2016
	D3	7/12/2016	x	x	Gallup Poll (2010): In U.S. 64% Support Death Penalty in Cases of Murder
	D4	7/12/2016	x	x	Gallup Poll (2006): Two in Three Favor Death Penalty for Convicted Murderers
	D5	7/12/2016	x	x	Gallup Poll (2014): Americans' Support for Death Penalty Stable
	D6	7/12/2016	x	x	Poll (2015): Voters Back S. Ct. for Gay Marriage, Poll Finds Less Support for Death Penalty
	D7	7/12/2016	x	x	Support for Death Penalty Still High, But Down (Washington Post - 6/5/2014)
	D8	7/12/2016	x	x	Letter from Samuel Gross: RAND/UCLA Study of the Federal Death Penalty (4/29/2005)
	D9	7/12/2016	x	x	E-mails re: Review of the Draft Federal Death Penalty Report (2/13/2006)
	D10	7/12/2016	x	x	Report: Review of Race & the Decision to Seek the Death Penalty in Federal Cases (2/19/2006)
	D11	7/12/2016	x	x	Letter (10/9/2006) from Experts re: RAND report on Federal Death Penalty Study of 7/17/2006
	D12	7/12/2016	x	x	Publication (1985): Homicide & Deterrence: Reexamination of the U.S. Time-Series Evidence
	D13	7/12/2016	x	x	Publication (1987): Miscarriages of Justice in Potentially Capital Cases
	D14	7/12/2016	x	x	Publication (1989): Persistent Flaws in Econometric Studies of Deterrent Effect of Death Penalty
	D15	7/12/2016	x	x	Publication (1996): Policy & Perspective: Deterrence & the Death Penalty: Views of the Experts
	D16	7/12/2016	x	x	Murderous Pardons? (Washington Post 1/20/2002)
	D17	7/12/2016	x	x	Publication (2002): Race, Region & Death Sentencing in Illinois, 1988-1997
	D18	7/12/2016	x	x	Publication (2003): The Role of the Press in the Clemency Process
	D19	7/12/2016	x	x	Article (2004): Does the Death Penalty, by Risking Execution of Innocent, Violate Due Process?
	D20	7/12/2016	x	x	Publication (2005): New Claims about Executions & General Deterrence: Deja vu All Over Again?
	D21	7/12/2016	x	x	Publication (2005): Uses & Abuses of Empirical Evidence in the Death Penalty Debate
	D22	7/12/2016	x	x	Publication (2005): Impact of Legally Inappropriate Factors on Death Sentencing in Cal. Homicide
	D23	7/12/2016	x	x	Evaluating Fairness & Accuracy in State Death Penalty Systems-Georgia Assessment Report

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	D24	7/12/2016	x	x	Publication (2006): Death&Deterrence:Science, Law & Causal Reasoning on Capital Punishment
	D25	7/12/2016	x	x	Publication (2006): Race & Death Sentencing in Georgia 1989-1998
	D26	7/12/2016	x	x	Publication (2006): Race, Gender, Region & Death Sentencing in Colorado, 1980-1999
	D27	7/12/2016	x	x	Publication (2007): Innocents Convicted: Empirically Justified Factual Wrongful Conviction Rate
	D28	7/12/2016	x	x	Publication (2009): Do Executions Lower Homicide Rates?: Views of Leading Criminologists
	D29	7/12/2016	x	x	Publication (2011): Death Sentencing in East Baton Rouge Parish, 1990-2008
	D30	7/12/2016	x	x	Publication (2011): Econometric Estimates of Deterrence of the Death Penalty: Facts or Ideology?
	D31	7/12/2016	x	x	Publication (2011): Race & Death Sentencing in North Carolina, 1980-2007
	D32	7/12/2016	x	x	Report (2012): Deterrence & the Death Penalty (National Research Council)
	D33	7/12/2016	x	x	Publication (2013): Executing the Innocent
	D34	7/12/2016	x	x	Publication (2014): Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death
	D35	7/12/2016	x	x	Publication (2014): Deterrence & the Death Penalty: Why the Statistics Should be Ignored
	D36	7/12/2016	x	x	DOJ Report (2014): Capital Punishment, 2013 - Statistical Tables, Bureau of Justice Statistics
	D37	7/12/2016	x	x	Tables (2014): Statistical Tables: Sentencings & Executions by Year, Race, Region & Jurisdiction
	D38	7/12/2016	x	x	Publication (2009): Empirical Studies of Race & Geographic Discrim. in Admin. of Death Penalty
	D39	7/12/2016	x	x	Publication (2014): Race Discrimination & Death Penalty: An Empirical & Legal Overview
	D40	7/12/2016	x	x	Report (1990): Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities
	D41	7/12/2016	x	x	DOJ Report (2001): Supplementary Data, Analysis & Revised Protocols for Capital Case Review
	D42	7/12/2016	x	x	Report: Death Penalty Information Center: Execution List 2015
	D43	7/12/2016	x	x	Report: Illinois Crime Rates 1960-2014 (Illinois Population & Number of Crimes 1960-2014)
	E				Exhibits of Witness Carol Steiker
	E1	7/13/2016	x	x	Curriculum Vitae of Carol Steiker
	E2	7/13/2016	x	x	Expert Report - 5/26/2016
	E3	7/13/2016	x	x	Publication (2002): Things Fall Apart, But the Center Holds: Supreme Court & the Death Penalty
	E4	7/13/2016	x	x	Publication (2006): No, Capital Punishment is not Morally Required: Deterrence, Deontology. . .
	E5	7/13/2016	x	x	Report of the Council to the Membership of ALI on the Matter of the Death Penalty (2009)

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	E6	7/13/2016	x	x	Publication: The Road to Abolition? The Future of Capital Punishment in the United States
	E7	7/13/2016	x	x	Publication (2010): Capital Punishment: A Century of Discontinuous Debate
	E8	7/13/2016	x	x	Publication (2010): Costs & Capital Punishment: A New Consideration Transforms an Old Debate
	E9	7/13/2016	x	x	Publication (2010): No More Tinkering: ALI & the Death Penalty Provisions of Model Penal Code
	E10	7/13/2016	x	x	Publication: America's Experiment w/Capital Punishment: Reflections on Past, Present & Future. .
	E11	7/13/2016	x	x	Book Review (2012): Capital Punishment & Contingency: Death Penalty in an Age of Abolition
	E12	7/13/2016	x	x	2016 Democratic Party Platform (Draft) - 7/1/2016
	E13	7/13/2016	x	x	America's Top 5 Deadliest Prosecutors: How Overzealous Personalities Drive the Death Penalty
	E14	7/13/2016	x	x	Article: The Prosecutors Who Aim to Kill (NY Times Opinion Pages, 7/2/2016)
	E15	7/13/2016	x	x	Article (2016): Pfizer's Position on Use of Our Products in Lethal Injections for Capital Punishment
	F				Exhibits of Witness Wanda Foglia
	F1	7/13/2016	x	x	Curriculum Vitae of Wanda Foglia
	F2	7/13/2016	x	x	Expert Report - 5/31/2016
	F3	7/13/2016	x	x	Proposed Expert Testimony in Support of Dispositive Constitutional Motions (U.S. v. Sampson)
	F4	7/13/2016	x	x	Publication (1984): Law & Human Behavior: Death Qualification
	F5	7/13/2016	x	x	Publication (1994): Modern Death Qualification: New Data on Its Biasing Effects
	F6	7/13/2016	x	x	Publication (1998): Foreclosed Impartiality in Capital Sentencing: Jurors' Predispositions, Guilt. . .
	F7	7/13/2016	x	x	Publication (1999): Death by Default: Empirical Demonstration of False & Forced Choices. . .
	F8	7/13/2016	x	x	Publication (2003): Still Singularly Agonizing: Law's Failure to Purge Arbitrariness from Capital. . .
	F9	7/13/2016	x	x	Publication (2010): Jurors' Failure to Understand or Comport w/Constit. Standards in Capital. . .
	F10	7/13/2016	x	x	List of Publications at the School of Criminal Justice, SUNY
	F11	7/13/2016	x	x	Power Point presentation of Wanda Foglia
	F12	7/13/2016	x	x	Publication (1994): Analysis of Capital Jury Decision Making Under Special Issues Sentencing. . .
	F13	7/13/2016	x	x	Publication (1994): A Preliminary Study of California's Capital Penalty Instructions
	F14	7/13/2016	x	x	Publication (1997): Analysis of Instructional Comprehension & Penalty Phase Closing Arguments
	F15	7/13/2016	x	x	Publication: Stacking the Deck for Guilt & Death: Failure of Death Qual. to Ensure Impartiality

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	F16	7/13/2016	x	x	Juror Interview Instrument: Nat'l Study of Juror Decision Making in Capital Cases
	F17	7/13/2016	x	x	Interviewer's Guide for Capital Jury Project
	F18	7/14/2016	x	x	Juror Questionnaire - U.S. v. Donald Fell (5/23/2005)
	F19	7/14/2016	x	x	Transcript of Preliminary Jury Instructions re: Sentencing Phase - 6/27/2005 (U.S. v. Donald Fell)
	F20	7/14/2006	x	x	U.S. v. Donald Fell - Special Verdict Form (7/14/2005)
	H				Exhibits of Witness Scott Sundby
	H1	7/14/2016	x	x	Curriculum Vitae of Scott Sundby
	H2	7/14/2016	x	x	Expert Report - 5/30/2016
	H3	7/14/2016	x	x	Declaration of Scott Sundby (12/11/2014), U.S. v. Gary Sampson (D. Mass.)
	H4	7/14/2016	x	x	Publication (1997): Jury as a Critic: Empirical Look at How Capital Juries Perceive Expert & Lay. .
	H5	7/14/2016	x	x	Publication (1998): Jurors' Predispositions, Guilt-Trial Experience & Premature Decision Making
	H6	7/14/2016	x	x	Publication (1998): Capital Jury & Absolution: Intersection of Trial Strategy Remorse & Death Pen.
	H7	7/14/2016	x	x	Publication (2001): An Empirical Analysis of the Role of Jurors' Race & Jury Racial Composition
	H8	7/14/2016	x	x	Publication (2008): Necessity of Knowing & Heeding What Jurors Tell Us About Mitigation
	H9	7/14/2016	x	x	Publication (2010): War & Peace in the Jury Room: How Capital Juries Reach Unanimity
	H10	7/14/2016	x	x	Publication (2014): True Legacy of Atkins & Roper: Unreliability Principle, Mentally Ill Defendants. .
	H11	7/14/2016	x	x	School of Criminal Justice - Publication List (SUNY)
	C				Exhibits of Witness Lisa Greenman
	C1	7/14/2016	x	x	Curriculum Vitae of Lisa Greenman
	C2	7/14/2016	x	x	Expert Report
	C3	7/14/2016	x	x	Recommendations re: Cost & Quality of Defense Representation (Spencer Report - 1998)
	C4	7/14/2016	x	x	Memo re: Release of Update of Spencer Report (11/24/2010)
	C5	7/14/2016	x	x	Update on Cost & Quality of Defense Representation in Federal Death Penalty Cases (2010)
	C6	7/14/2016	x	x	Power Point Presentation of Lisa Greenberg

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	G				Exhibits of Witness Richard Dieter
	G1	7/15/2016	x	x	Curriculum Vitae of Richard Dieter
	G2	7/15/2016	x	x	Expert Report - 5/31/2016
	G3	7/15/2016	x	x	Report (1993): Innocence & the Death Penalty: Assessing the Danger of Mistaken Executions
	G4	7/15/2016	x	x	Report (1994): Racial Disparities in Federal Death Penalty Prosecutions, 1988-1994
	G5	7/15/2016	x	x	DOJ Report (2000): The Death Penalty System: A Statistical Survey (1988-2000)
	G6	7/15/2016	x	x	Publication (2007): A Crisis in Confidence: Americans' Doubts About the Death Penalty
	G7	7/15/2016	x	x	Report (2011): Struck by Lightning: Continuing Arbitrariness of Death Penalty 35 Years After Its. .
	G8	7/15/2016	x	x	Publication (2013): The 2% Death Penalty: How a Minority of Counties Produce Most Death. . .
	G9	7/15/2016	x	x	Report (2015): Innocence: List of Those Freed From Death Row
	G10	7/15/2016	x	x	Report (2015): The Death Penalty in 2015: Year End Report
	G11	7/15/2016	x	x	Report (2016): Facts About the Death Penalty
	G12	7/15/2016	x	x	Report (2016): List of Death Row Prisoners
	G13	7/15/2016	x	x	Report (2016): Executions in the U.S. 1608-2002: The Espy File
	G14	7/15/2016	x	x	Report (2016): Future Dangerous Predictions Wrong 95% of the Time: New Study on Capital. . .
	G15	7/15/2016	x	x	Report (2016): National Polls & Studies
	G16	7/15/2016	x	x	Report (2016): Death Penalty Information Center: Vermont, General Information
	I				Exhibits of Witness Kevin McNally
	I1	7/15/2016	x	x	Expert Report - 6/1/2016
	I2	7/15/2016	x	x	Declaration of Witness re: Geographic Location, Frequency of Death Sentences & Race & Gender
	I3	7/15/2016	x	x	Report (2015): The Federal Death Penalty
	I4	7/15/2016	x	x	Report: Federal Prosecutions Alleging Three Victims Case Comparison
	I5	7/15/2016	x	x	Defense Team Memo (2016) re: Three Victim Federal Death Prosecutions
	I6	7/15/2016	x	x	Court Document (2008): Declaration of Expert re: Gender & Race (U.S. v. Friend & Lecco)
	I7	7/15/2016	x	x	Court Document (2008): Exhibit B (Chart - Completed "Authorized" Federal Death Penalty Cases
	I8	7/15/2016	x	x	Court Document (2008): Exhibit C (Declaration of Lauren Bell, Ph.D.) (U.S. v. Friend & Lecco)

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	I9	7/15/2016	x	x	Chart: Completed Authorized Cases (4/26/2016)
	I10	7/15/2016	x	x	Chart: Completed Authorized Cases (8/25/2008 - 4/26/2016)
	I11	7/15/2016	x	x	Publication (2004): Race & the Federal Penalty: A Nonexistent Problem Gets Worse
	I12	7/15/2016	x	x	Power Point Presentation of Kevin McNally
	I13	7/15/2016	x	x	List of Federal Capital Homicides Involving Three or More Victims
	I14	7/15/2016	x	x	Curriculum Vitae of Kevin McNally
	I15	7/15/2016	x	x	Four Binders: Notices of Intent & Findings
	K				Exhibits for Government Witness Frank Newport
	K1	7/18/2016	x	x	Gallup Death Penalty Results Overview
	K2	7/18/2016	x	x	Polling Matters: Why Leaders Must Listen to the Wisdom of the People (Excerpts)
	K3	7/18/2016	x	x	In U.S. Support of the Death Penalty Falls to 39-Year Low (2011)
	K4	7/18/2016	x	x	U.S. Death Penalty Support Lowest in More than 40 Years (2013)
	K5	7/18/2016	x	x	The Trend Line: Approval of Death Penalty Continues to Decline (2013)
	K6	7/18/2016	x	x	Americans: "Eye for an Eye" Top Reason for the Death Penalty (2014)
	K7	7/18/2016	x	x	Americans' Support for the Death Penalty Morally Stable (2014)
	K8	7/18/2016	x	x	Most Americans Continue to Say Death Penalty Morally OK (2015)
	K9	7/18/2016	x	x	Americans Continue to Shift Left on Key Moral Issues (2015)
	K10	7/18/2016	x	x	Solid Majority Continue to Support Death Penalty (2015)
	K11	7/18/2016	x	x	Congressional Report 161: 138 (9/24/2015)
	K13	7/18/2016	x	x	Birth Control, Divorce Top List of Morally Acceptable Issues (2016)
	K14	7/18/2016	x	x	Gallup Historical Trends, Death Penalty
	K15	7/18/2016	x	x	DVD - Video Clips of Frank Newport reporting
	K19	7/18/2016	x	x	Sixty-Nine Percent of Americans Support the Death Penalty (2007)
	M				Exhibits for Government Witness Naci Mocan
	M3	7/19/2016	x	x	Who Shall Live & Who Shall Die? Analysis of Prisoners on Death Row in the U.S. (2004)

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	M5	7/19/2016	x	x	Deterrence & Executions: Does the Death Penalty Save Lives? 1977-2006 (2009)
	L				Exhibit for Government Witness Matthias Schonlau
	L9	7/19/2016	x	x	Baldus Ltr. to Senators Feingold & Brownback re: RAND Study of Federal Death Penalty (2007)
	O				Exhibits for Government Witness Paul Zimmerman
	O1	7/20/2016	x	x	Estimating the Impact of the Death Penalty on Murder (2009)
	O3	7/20/2016	x	x	What Do Panel Studies Tell Us About a Deterrent Effect of Capital Punishment? A Critique (2012)
	O4	7/20/2016	x	x	Empirical Evaluation of Law: The Dream and the Nightmare (2015)
	O5	7/20/2016	x	x	Murders of Passion, Execution Delays, and the Deterrence of Capital Punishment (2004)
	O6	7/20/2016	x	x	Deterrence Versus Brutalization: Capital Punishment's Differing Impacts Among States (2005)
	O7	7/20/2016	x	x	Crime and Punishment: An Economic Approach (Becker Report)
					WITNESSES
	1	7/11/2016			Craig Haney, Ph.D., Professor of Psychology, Director of Program Studies, U. California
	2	7/12/2016			Thomas Reidy, Ph.D., ABPP, Independent Practice
	3	7/12/2016			Michael Radelet, Ph.D., Professor, Dep't of Sociology, University of Colorado-Boulder
	4	7/13/2016			Carol Steiker, J.D., Harvard Law School Faculty
	5	7/13/2016			Wanda Foglia, Ph.D., J.D., M.S., Professor of Law & Justice Studies, Rowan University
		7/14/2016			Wanda Foglia (testimony continued from 7/13/2016)
	6	7/14/2016			Scott Sundby, J.D., Professor of Law & Associate Dean, University of Miami
	7	7/14/2016			Lisa Greenman, J.D., Consulting Attorney
		7/15/2016			Lisa Greenman (testimony continued from 7/14/2016)
	8	7/15/2016			Richard Dieter, J.D., M.S., Principal, RDieter Communications
	9	7/15/2016			Kevin McNally, J.D., Director, Federal Death Penalty Resource Counsel Project

UNITED STATES DISTRICT COURT

DISTRICT OF

VERMONT

UNITED STATES OF AMERICA

GOVERNMENT 'S

EXHIBIT AND WITNESS LIST

V.

DONALD FELL

Case Number: 5:01-cr-12-01

PRESIDING JUDGE Geoffrey W. Crawford					PLAINTIFF'S ATTORNEY S. Jimenez, R. Burns, W. Darrow	DEFENDANT'S ATTORNEY M. Burt, K. DeWolfe, L. Rogers
TRIAL DATE (S) 7/11/2016 - 7/21/2016					COURT REPORTER Anne Henry	COURTROOM DEPUTY Pamela Lane
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
1a		7/18/2016	x	x	Expert Report of Richard M. Newport, Ph.D.	
1b		7/18/2016	x	x	Curriculum Vitae of Richard Newport	
1c		7/18/2016	x	x	Gallup Death Polling Reports	
2a		7/18/2016	x	x	Expert Report of Matthias Schonlau, Ph.D.	
2b		7/18/2016	x	x	Curriculum Vitae of Matthias Schonlau	
2c		7/18/2016	x	x	RAND Technical Report: Race & the Decision to Seek the Death Penalty in Federal Cases	
3a		7/19/2016	x	x	Expert Report of H. Naci Mocan, Ph.D.	
3b		7/19/2016	x	x	Curriculum Vitae of H. Naci Mocan	
3c		7/19/2016	x	x	Getting Off Death Row: Commuted Sentences & Deterrent Effect of Capital Punishment (2003)	
3d		7/19/2016	x	x	Impact of Incentives on Human Behavior: Can We Make it Disappear? Case of the Death Penalty	
4a		7/19/2016	x	x	Expert Report of John Oliver	
4b		7/19/2016	x	x	Curriculum Vitae of John Oliver	
9		7/19/2016	x	x	Binder of Federal Bureau of Prisons Documents	
9a		7/19/2016	x	x	DOJ Report & Recommendations Concerning Use of Restrictive Housing (2016)	
9b		7/19/2016	x	x	BOP Program Statement - Inmate Security Designation & Custody Classification	
9c		7/19/2016	x	x	BOP Inmate Discipline Program	
9d		7/19/2016	x	x	BOP Categorization of Offenses	
9e		7/19/2016	x	x	BOP Program Statement - Control Unit Programs	
9f		7/19/2016	x	x	BOP Special Management Units	
9g		7/19/2016	x	x	BOP Program Statement - Education, Training & Leisure Time Program Standards	
9h		7/19/2016	x	x	BOP Program Statement - Unit Management Manual	
9i		7/19/2016	x	x	BOP Statement - Inmate Classification & Program Review	

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

AO 187A (Rev. 7/87)

EXHIBIT AND WITNESS LIST – CONTINUATION

UNITED STATES OF AMERICA vs. DONALD FELL					CASE NO. 5:01-cr-12-01
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES
9j		7/19/2016	x	x	BOP General Population & Step-Down Unit Operations
5a		7/20/2016	x	x	Expert Report of Paul R. Zimmerman, Ph.D.
5b		7/20/2016	x	x	Curriculum Vitae of Paul R. Zimmerman
5c		7/20/2016	x	x	State Executions, Deterrence & the Incidence of Murder (2004)
5d		7/20/2016	x	x	Estimates of the Deterrent Effect of Alternative Execution Methods in the U.S.: 1978-2000 (2006)
5e		7/20/2016	x	x	Statistical Variability and the Deterrent Effect of the Death Penalty (2009)
5f		7/20/2016	x	x	Handbook on Economics of Crime: Chapter 16: Economics of Capital Punishment & Deterrence
8a		7/21/2016	x	x	Expert Report of David Berkebile
8b		7/21/2016	x	x	Curriculum Vitae of David Berkebile
10		7/11/2016	x	x	One Year Longitudinal Study of the Psychological Effects of Administration Segregation (2010)
11		7/11/2016	x	x	The Context & Clarification of a Single Study: Response to Commentaries of Study (exhibit 10)
12		7/11/2016	x	x	Commentary: Toward an Improved Understanding of Administrative Segregation (2013)
13		7/15/2016	x	x	DOJ, Offices of the U.S. Attorneys, U.S. Attorneys Manual: Death Penalty Protocol
					WITNESSES
1		7/18/2016			Frank Newport, Editor-In-Chief, Gallup Poll
2		7/18/2016			Matthias Schonlau, Ph.D., Professor of Statistics, University of Waterloo, Ontario, Canada
3		7/19/2016			H. Naci Mocan, Ph.D., Chair of Economics, E. J. Ourso College of Business
4		7/19/2016			John Oliver, Senior Warden, Big Spring Correctional Center, Big Spring, Texas
--		7/19/2016			Continued Testimony of Matthias Schonlau from 7/18/2016
5		7/20/2016			Paul R. Zimmerman, Ph.D., Staff Economist, U.S. Federal Trade Commission
6		7/21/2016			David Berkebile, Warden, Adams County Correctional Center, Natchez, Mississippi

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA)
)
 VS) CASE NO: 5:01-cr-12
)
 DONALD FELL)
)
 _____) MOTIONS HEARING

BEFORE: HONORABLE GEOFFREY W. CRAWFORD
DISTRICT JUDGE

APPEARANCES: SONIA V. JIMENEZ, ESQUIRE
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(Appearances Continued:)

DATE: July 11, 2016

TRANSCRIBED BY: Anne Marie Henry, RPR
Official Court Reporter
P.O. Box 1932
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1 (The Court opened at 9:00 a.m.)

2 THE CLERK: Your Honor, the matter before the
3 Court is criminal number 01-12, United States of America
4 versus Donald Fell. Present on behalf of the government are
5 Sonia Jimenez, Richard Burns and William Darrow. Present on
6 behalf of the defendant are Michael Burt, Kerry DeWolfe and
7 Laura Rogers. We are here for motions identified on the
8 court docket as documents 668, 669, 670, 673 and 674. The
9 first order of the Court is to swear in government counsel,
10 Richard Burns.

11 THE COURT: All right. Mr. Burns, you've applied
12 and qualified for membership in this Court. And if you
13 raise your right hand we'll grant your application and swear
14 you in as a member of the district.

15 MR. BURNS: Thank you, Your Honor.

16 (So sworn)

17 THE COURT: Welcome. Glad to have you.

18 MR. BURNS: Thank you.

19 THE COURT: Welcome. Yes, Miss Rogers?

20 MS. ROGERS: I have not been sworn in either.

21 THE COURT: Oh, you've got an application pending?

22 MS. ROGERS: Yes.

23 THE COURT: Oh, good. I'm sorry. I didn't mean
24 to overlook you at all. And we'll grant it and swear you in
25 as well too. Thank you.

1 THE CLERK: This is counsel Laura Rogers.

2 (So sworn)

3 THE COURT: Welcome both of you. Glad to have
4 you. I just have a few things to say.

5 I want to welcome everybody whose come today. I'm
6 extremely grateful for the efforts everyone has made to come
7 here this week and the next, that includes the witnesses and
8 the lawyers.

9 After a rainy weekend I think central Vermont is
10 prepared to put on a show of good weather for you. And from
11 my part I can't express easily how interested and pleased I
12 am to spend these weeks together with you all on the subject
13 of consuming interest and great importance to everyone in
14 this room.

15 Let me say a couple things to frame our discussion
16 and to set a few ground rules. The death penalty is one of
17 those handful of topics in the law where morality, our
18 common history, sociology, our views on life and on death
19 and crime and punishment, all seem to come together.

20 Like the Balkans in 1914, the subject is a kind of
21 intellectual tinderbox with an influence on our national
22 discourse, somewhat in disproportion to its actual
23 application and use.

24 For both sides here today these issues are, of
25 course, intensely experienced in the setting of the

1 individual case. Arguments about the death penalty also
2 seem to serve as a sort of symbolic language in which both
3 sides are about right and wrong, nature and nurture,
4 determinism and freewill and the consequences of our
5 actions.

6 So the question is why we're here today. When I
7 received the defense motions last fall relating to the
8 constitutional questions my first thought Mr. Burt was that
9 these issues were unlikely to suffer from a lack of
10 briefing. But my second thought was this, the world is
11 hardly waiting for the views of a single trial court judge
12 on issues which have been before the U.S. Supreme Court and
13 the Supreme Courts of many states for more than a century,
14 but there's one thing on which the parties here and the
15 Court holds a virtual monopoly, unlike the judges and
16 justices to whom we all report, this Court can hold a
17 hearing. We can move past the competing citations to the
18 scholarly literature, for at this point one can find
19 empirical support for almost any reasonable position.

20 We can hear from the scholars themselves and we
21 can question them and we can create together a rich, factual
22 record for higher courts with broader authority to rule on
23 the larger questions.

24 So a couple of suggestions, just practical things.
25 Both sides have a lot of ground to cover today and in the

1 next two weeks. I suggest that we stipulate generally to
2 the admission of academic papers and studies and spend our
3 time on the merits of their methodology and their
4 conclusions.

5 All of the witnesses have distinguished CV's. If
6 these come in we can move quickly through the witnesses'
7 credentials and experience. Everyone needs an introduction,
8 of course, but there will be no need to cover all of the
9 honors each has received.

10 And, finally, both sides are going to have to be
11 respectful of the other party's need for cross examination.
12 Sometimes I complain that I don't learn much in cross
13 examination in a normal case for a variety of reasons.
14 Direct really seems to be where the heart of the thing is.
15 Here I think the cross examination by both sides is going to
16 be as important as the direct.

17 We'll run from 9 to noon and 1 to 5 with a 15
18 minute break in the morning and the afternoon. On Wednesday
19 I need to adjust the schedule a little to convene drug
20 court, which meets from 10 to 12. So we'll start, I'll talk
21 about this so you don't have to remember it now, but we'll
22 start that day at 8:30 break at 10 and commence again at 1.
23 We'll go to 5:30. So the total loss of time will only be
24 about an hour.

25 And I thought each day we could start with a short

1 description of the witnesses coming that day from the
2 parties whose week it is to call witnesses.

3 So I'll be quiet now and be glad to hear from the
4 defense and from the government about anything else which
5 needs attention before we get going on the merits.

6 MR. BURNS: Your Honor, I do have one point.

7 THE COURT: Sure.

8 MR. BURNS: May I ask first, is it the Court's
9 preference for attorneys to move to the lecturn to make
10 objections?

11 THE COURT: Objections from the table are fine.
12 You know, it's too much running back and forth. I think
13 questioning witnesses is a lot easier if you come to the
14 lecturn because we can see each other and you're that much
15 closer to the witness.

16 MR. BURNS: Thank you, Your Honor.

17 We did want to make a generic objection to the way
18 the defense has provided information and is apparently
19 planning to proceed. And that is, in lines with what the
20 Court just delineated in terms of how we want to approach
21 the hearing, an opportunity to examine the scholarly
22 articles by the people who actually are responsible for them
23 and to have an opportunity for cross examination of each
24 other's witnesses.

25 When we went through the defendant's witnesses'

1 reports we see that there are citations to 50, 60 different
2 scholarly articles for some of these individual witnesses,
3 the majority of which are citations to work by other people.

4 So I don't know that there really is an ability
5 for the government to adequately assess the validity of
6 scholarly studies that are done by people who are not here
7 actually testifying. We are limited in our ability to only
8 testify with the one witness who is here.

9 We wanted to lodge an objection to the extent that
10 a witness testifies about studies or articles that are not
11 authored or co-authored by them for purposes of moving
12 through the hearing.

13 THE COURT: I guess I would say this, you know,
14 unless you're Isaac Newton, everybody's work rests on
15 somebody else's work. And I'm sensitive to what you say and
16 the point isn't here to bring in someone as a conduit for
17 things they know nothing about.

18 Why don't we take it, you know, case by case and
19 witness by witness, but I would expect that most of these
20 people have, haven't conducted all the studies themselves
21 because no human being could. We only get what, 40 years in
22 a work life.

23 MR. BURNS: Exactly. That is our concern is have
24 a witness who spent 20 to 30 years working in this arena and
25 has knowledge and access to literally a hundred different

1 studies. The extent to which we can really test the
2 validity of all the studies is impossible. And even if we
3 limited it to just the studies performed by the particular
4 witnesses testifying it's challenging enough, but at least
5 gives us an opportunity.

6 And I didn't know whether -- we wanted to express
7 our concern about that. And also to learn, as an
8 administrative matter, whether we should make an objection
9 each time they start talking about a study that is not their
10 own or just is it sufficient that we've made our concerns?

11 THE COURT: I think you've fairly raised your
12 concerns today.

13 MR. BURNS: Okay. Thank you, Your Honor.

14 THE COURT: Mr. Burt, you have anything that you
15 need to add today before you get going?

16 MR. BURT: No, Your Honor. There was some
17 discussion about stipulations. We could do that at another
18 time. I'm anxious actually to start with a witness because
19 we have some time limitations with our first witness. But
20 in terms of the Court's suggestion that we let the Court
21 know whose coming for the day, today we have two witnesses.
22 Dr. Craig Haney will be our first witness. And he will be
23 followed by Dr. Thomas Reidy.

24 And I suspect that that, those two witnesses will
25 take the entire day. I'm hoping to get Dr. Haney off no

1 later than 3 o'clock today and then we would start right
2 away with Dr. Reidy.

3 THE COURT: Sure. Okay. I think we're ready to
4 begin.

5 MR. BURT: Thank you. We would call Dr. Craig
6 Haney.

7 C R A I G H A N E Y, The Witness, after being
8 duly sworn, was examined and testified as follows:

9 THE COURT: Good morning. Thank you for making
10 the trip.

11 THE WITNESS: Good morning, Your Honor.

12 THE COURT: It wasn't a great weekend for travel.
13 Did you come in okay?

14 THE WITNESS: I came in fine. Thank you.

15 THE COURT: Good. Good. Glad to have you here.

16 MR. BURT: And Your Honor should have before you
17 certain volumes. There are exhibit volumes for each
18 individual witness. And those have been pre-marked. The
19 exhibit volumes relating to Dr. Haney are in three volumes.
20 The first volume is marked A1 through 18. The second is
21 marked A19 through 28. And the third is marked A29 through
22 31.

23 THE COURT: Thank you. I have all three.

24 MR. BURT: Thank you.

25 DIRECT EXAMINATION BY MR. BURT:

1 Q. Sir, could you state your name, for the record, and
2 tell the Court who you are?

3 A. Yes. My name is Craig Haney. I'm a Professor of
4 Psychology at the University of California at Santa Cruz.

5 Q. And, doctor, in accordance with the Court's instruction
6 about keeping the qualifications fairly brief here, give the
7 Court just a little thumbnail sketch on what you do for a
8 living and what your expertise is in the area of the death
9 penalty?

10 A. My general area of expertise in psychology is what's
11 generally called psychology and law. I became interested as
12 a graduate student in this application of psychological
13 principles and theories and data to various legal questions.

14 So got a Ph.D. in psychology at Stanford. Went to
15 law school at Stanford. And have been doing research on
16 primarily two very general topics. One, the topic on which
17 I began work in psychology and law while still a fairly
18 young graduate student is the psychology of imprisonment.

19 And somewhere along the line, after getting into
20 graduate school and starting to connect to the issues in the
21 law school, I became interested in another very general
22 topic, capital punishment, the system of death sentencing in
23 the United States.

24 So over really a 40 year period I've done research
25 almost equally much in both general areas. The research has

1 taken different forms. I worked on different topics. But
2 largely under the rubric of either the psychology of
3 imprisonment or some aspect of the system of death
4 sentencing in the United States; either the manner in which
5 the system of death sentencing unfolds or proceeds in the
6 United States and it's also involved becoming very
7 interested in doing research on the backgrounds and social
8 and institutional histories of people who are charged with
9 or convicted of capital crimes.

10 Q. And can you tell the Court, just generally, the two
11 topics you're going to discuss today in your testimony?

12 A. Yes. You asked me to prepare testimony for the Court
13 on the issue of solitary confinement, the effects of
14 solitary confinement. And, in particular, the conditions of
15 confinement that exist in the special confinement unit, the
16 federal death row facility at the United States Penitentiary
17 at Terra Haute.

18 And then you also asked me to prepare testimony on
19 a separate issue. The state of knowledge on the issue of
20 death qualification. The procedure that is used in capital
21 cases to identify persons who are eligible to serve on a
22 jury, in part, on the basis of their attitudes towards the
23 death penalty.

24 Q. Now, are those the only two topics that your research
25 and writing has focused on in relation to the death penalty?

1 A. No. No. I've done research on a variety of different
2 aspects having to do with capital punishment. I wrote a
3 book about the entire system of death sentencing in the
4 United States.

5 Q. And besides writing a book about the death system in
6 the United States, have you also published a number of
7 articles that are listed in your C.V. about various aspects
8 of capital punishment, as well as various aspects about the
9 effects, psychological effects of long-term incarceration?

10 A. Yes, I have.

11 Q. Okay. You are a social psychologist; correct?

12 A. I am.

13 Q. You are not a clinical psychologist; right?

14 A. Correct.

15 Q. And how is that field different than say what a
16 clinical psychologist does?

17 A. Clinical psychologists are trained in the diagnosis and
18 treatment of various forms of mental disorders, mental
19 illness, mental health problems and so on.

20 Social psychologists are trained in how people, in
21 general, react to various conditions, experiences,
22 circumstances. So social psychologists don't focus
23 exclusively on people who have different forms of mental
24 disorder or emotional distress.

25 Q. In terms of your experience in assessing the

1 psychological effects of incarceration, give the Court a
2 sense of your experience in that particular field. Who have
3 you worked for doing that kind of work and how long has that
4 work been going on in your experience?

5 A. I, it's a topic that I became interested in as a young
6 graduate student. Phillip Zimbardo and Curtis Banks and I
7 did an experiment when I was a second year graduate student
8 at Stanford that became a very famous experiment. It's
9 called the Stanford Prison Experiment in which we put
10 college student volunteers in a prison-like environment,
11 randomly assigning half of them to be prisoners and the
12 other half to be guards.

13 We expected that there would be some differences
14 between both groups. That's why we did the study. But the
15 results were very dramatic. The young students were changed
16 and transformed by the experiment almost immediately.

17 As a graduate student I was there for most of it.
18 And I watched these transformations take place. And it
19 underscored for me the power of institutional environments,
20 particularly prison environments. And I began, even as a
21 graduate student, to study how people were changed and
22 affected in real prisons, not simulated prisons.

23 Correctional officers, to a certain extent, but I
24 focused my attention primarily on prisoners, mostly in
25 maximum security prisons. And then over the years, the

1 focus of today's testimony, I began to concentrate on the
2 issue of solitary confinement, an increasingly widespread
3 practice in the United States in the late 1970's and
4 throughout the '80's, and really up to the present time.

5 And I devised a technique for interviewing and
6 understanding the ways in which prisoners were affected by
7 their conditions of confinement.

8 As His Honor said earlier, very -- everybody
9 learns from other people who have gone before them. So
10 there were already well identified standard ways of
11 assessing people's emotional distress. And I simply applied
12 those techniques in institutional settings.

13 I've probably been in and accessed the effects of
14 conditions of confinement in dozens of state prison systems
15 and the federal prison system as well. Scores of prisons
16 around the country. Many, many solitary confinement units.
17 Over a four year or so year period I've probably interviewed
18 thousands of prisoners, including over a thousand who were
19 confined in solitary confinement type units.

20 Q. Have you done any work for governmental agencies
21 related to assessing the effects of prison conditions?

22 A. Yes. Quite a bit. I've been a consultant to various
23 Legislative bodies in California and elsewhere. I was a
24 member of the National Academy of Sciences Committee to
25 which I was appointed in 2012. It was a committee that was

1 charged with the responsibility of assessing the causes and
2 the consequences of high rates of incarceration in the
3 United States.

4 And my job, on the committee, was to bring to bear
5 the most up-to-date scientific knowledge about the effects
6 of imprisonment, what prison conditions did to or how they
7 changed the people who were exposed to them.

8 We published the results of that, the committee's
9 deliberations, which went on for two years in a book that
10 was published in 2014 on which I and the rest of the
11 committee members were a co-author.

12 I testified in front of the United States Senate
13 in 2012. Senator Durbin had a hearing, really a historic
14 hearing. There had never been a Senate hearing on the issue
15 of solitary confinement. There were four or five witnesses,
16 expert witnesses who were called to testify. And my job at
17 the hearing was to talk about the psychological effects of
18 solitary confinement.

19 In conjunction with the National Academy of
20 Sciences Report I've been a consultant to the White House on
21 several occasions to various Congressional Committees.
22 Basically briefing those bodies on the, the analysis and the
23 conclusions which the National Academy of Sciences Committee
24 reached. Consulted with Bureau of Justice Statistics,
25 National Institute of Justice, the Justice Department,

1 Homeland Security, all around issues of various aspects of
2 the psychology of prison confinement.

3 Q. And have you also, on the second topic you're going to
4 talk about here, the effects of death qualification, are you
5 also published fairly extensively in that area?

6 A. Yes. It's a topic which I became interested in the
7 1970's. And I, at the time many of these, the issues I'm
8 going to talk about were being litigated widely in the
9 United States. And I did, not only some, a number of
10 studies myself, but also testified about these issues in
11 various state and federal courts.

12 Q. You have a copy of the three binders of exhibits that I
13 referred to earlier?

14 A. I do. They are right here.

15 Q. Okay. And if you could take a look at the first
16 volume, which is volume one of three, A1 through 18?

17 A. Yes.

18 Q. Does tab one contain a current C.V. listing your
19 various qualifications and publications in the areas that
20 you're going to testify about, as well as other areas?

21 A. It does.

22 Q. And does tab two contain your expert witness report in
23 this case dated June 1st, 2016?

24 A. Yes.

25 Q. And do the remainder of the items in volume one and

1 also volume two and volume three contain copies of the
2 literature that you either wrote or are going to discuss
3 during the course of your testimony?

4 A. Yes.

5 MR. BURT: Judge, I would move into evidence, at
6 this point, Exhibits A1 through 31.

7 MS. JIMENEZ: Your Honor, the government does not
8 object, given the Court's comments earlier. I do just want
9 to note for the record that we received this exhibit list
10 Saturday night. And that some of the studies listed on this
11 exhibit list are not referenced in Dr. Haney's report. And
12 so we just learned about them Saturday night.

13 THE COURT: All right. I'll admit 1 through 31.

14 MR. BURT: Thank you, Your Honor. And, Your
15 Honor, at this point I would offer Dr. Haney as an expert in
16 social psychology and the effects, psychological effects of
17 long-term incarceration and in the death qualification
18 process.

19 MS. JIMENEZ: No objection.

20 THE COURT: Noted. And I welcome his testimony.

21 Q. Now, doctor, in terms of the substance of your
22 testimony, have you prepared a power point which hopefully
23 will get us through the material in fairly efficient fashion
24 here?

25 A. Yes, I have.

1 Q. And is a copy of that power point in volume number
2 three of that set of exhibits under tab 31?

3 A. Yes.

4 Q. And could we bring that up at this point? Doctor, does
5 this first slide, which corresponds with tab 31, set forth
6 the two topics you're going to talk about?

7 A. Yes, exactly.

8 Q. And in terms of the first topic, let's start there,
9 with the Conditions of Isolated SCU Confinement, tell us
10 what SCU refers to?

11 A. It's an acronym for this special confinement unit,
12 which is essentially the federal death row facility. It's
13 an area within the prison at the United States Penitentiary
14 at Terre Haute.

15 Q. And in terms of framing that particular issue, if I
16 could have the next slide, do you have a portion of Justice
17 Breyer's opinion in Glossip excerpted here?

18 A. Yes. It was my understanding that the, at least part
19 of the Court's focus in this proceeding was at least related
20 to some of the issues which Justice Breyer had surfaced in
21 his in Glossip. And as you all know, one of the issues that
22 he addressed or raised as a constitutional difficulty with
23 the death penalty is the fact that death rows are kept in
24 isolation, death row inmates are kept in isolation in most
25 parts of the country, and certainly, as you'll see in a

1 moment, in the federal system.

2 And so this is one portion or the first portion in
3 the Glossip opinion in which he raises that. There's a
4 following paragraph I think I've also quoted that --

5 Q. Okay. And in this excerpt we have here, Justice Breyer
6 says, it is well documented that such prolonged solitary
7 confinement produces numerous deleterious harms. And then
8 he cites, see, for example, Haney, Mental Health Issues in
9 Long-term Solitary and Supermax Confinement. Are you
10 familiar with that cite?

11 A. Yes.

12 Q. Did you write that article?

13 A. I did.

14 Q. Is that one of the articles you're going to talk about
15 today?

16 A. It is.

17 Q. And could I have the next slide, please? Is this also
18 from the Glossip dissent?

19 A. It is. Yes. It is, I mean, it elaborates a little bit
20 on the issue of the dehumanizing effect of solitary
21 confinement. But it's an interesting reference because it's
22 one of the few times that the United States Supreme Court
23 has talked directly about the dehumanizing effect of
24 solitary confinement. It's a 1890 case. And In re: Medley
25 actually is a death penalty case.

1 So many people like myself, who are scholars on
2 the issue of solitary confinement, cite this case because
3 it's the Court talking about the harms of solitary
4 confinement. But, in fact, it's solitary confinement that
5 was imposed as the aftermath of a death sentence, not unlike
6 the issue we're talking about now and that Justice Breyer
7 has raised in Glossip.

8 Q. So looking on the next slide, if we could, you're going
9 to talk, first of all, about the Conditions of Isolated, SCU
10 Confinement, correct?

11 A. Yes.

12 Q. And the next slide, could you define for us what you
13 mean by solitary confinement?

14 A. Yes. So there are a variety of ways to define it.
15 Most people who study it have settled upon a particular
16 definition. And that definition I've quoted here. And it's
17 actually from the United States Department of Justice.
18 They've used the definition that most people who study
19 solitary confinement use.

20 It basically means being confined to one's cell
21 for approximately 22 hours a day or more, alone or with
22 other prisoners, because solitary confinement can apply when
23 prisoners are actually double celled as long as they are
24 confined to their cell in the overwhelming majority of hours
25 in a day. And it limits their contact with others.

1 And they go on to say that an isolation unit means
2 a unit where all or most of those housed in the unit are
3 subjected to isolation as defined in the preceding
4 paragraph.

5 And this is a kind of operating definition that
6 most of us who study solitary confinement would endorse.
7 I've defined it in essentially the same way in scholarly
8 writing.

9 Q. And I think you allude in your report to the fact that,
10 or I'll ask you, is there any solitary confinement unit in
11 the country that imposes total solitary confinement in the
12 sense that there is absolutely no contact with any human
13 beings at any point in time?

14 A. No. There isn't and there can't be if you reflect on a
15 moment on that notion. You can't, you can't keep a human
16 being alive without having some contact with other persons.
17 They have to be fed. They have to get medical attention.
18 They have to be checked in on and so on.

19 So solitary confinement has never meant total and
20 complete isolation from another human being. It's
21 physically impossible to do that. It was impossible in the
22 19th century when solitary confinement was in widespread use
23 in the Eastern State Penitentiary in Philadelphia. It's
24 different now in the sense that we have more modern ways of
25 controlling and monitoring solitary confinement, but it's

1 essentially the same kind of experience that it's always
2 been. And, as I say, the Justice Department defines it just
3 fine in this quote.

4 Q. So tell us what the effects are. Just summarize that
5 for us in terms of the effects of solitary confinement as
6 you've defined it?

7 A. So there are, there are several kinds of, distinct
8 kinds of effects. And the first set of effects are what I
9 would call here, immediate symptoms or indices of stress and
10 trauma. And immediate doesn't mean that they happen in the
11 beginning and then go away.

12 One of the things that I've learned, as a result
13 of studying this widely, is that people are oftentimes
14 traumatized by the experience of being placed in solitary
15 confinement at the outset of their placement. And that
16 trauma continues. It does not necessarily, for most people,
17 subside. It happens early on. They have to figure out ways
18 to cope with and survive it. But, as you'll see when we
19 talk a little bit later about long-term confinement, many
20 people who have been in solitary confinement for a long
21 period of time are still suffering as a result of the
22 immediate shock that they felt when they first went into
23 solitary confinement.

24 There are many symptoms and indices of stress and
25 trauma. And they have been studied by lots of different

1 people. And I think the next slide actually to, not to
2 dwell on all of them, but just to underscore for the Court
3 how extensively these things have been studied, how many
4 people have looked at these issues, how many different
5 symptoms and indices of stress and trauma have been
6 identified in studies of solitary confinement.

7 So this long string cite, which I will mercifully
8 not go into in detail, basically just summarizes those
9 symptoms, the symptoms that have been documented in
10 empirical studies, the various studies that have documented
11 them. This is from an article of mine, the article that you
12 cited earlier that Justice Breyer also cited in 2003. There
13 are more studies that have been done since 2003 that aren't
14 listed here. But this just gives you a feel for how many of
15 these symptoms there are and how many people have studied
16 them.

17 Q. And that set of cites comes directly from your paper
18 that is cited in the Glossip dissent?

19 A. Yes.

20 Q. Which that full article is tab 16?

21 A. It is.

22 Q. Of the volume there?

23 A. I think this is Page 130 or 131 of that article, but
24 it's just a section of the article where there are citations
25 listed.

1 Q. In addition to your own writing on that topic, is there
2 support outside yourself for these effects?

3 A. Yes. In the next slide cites a couple of comprehensive
4 literature. Two of them are mine, but they don't cite only
5 my research. And, in fact, they purposely focus on the
6 research that has been done widely by other researchers.
7 Researchers, it's research really that spans decades, that
8 people have been interested in solitary confinement for a
9 long time.

10 I mentioned a moment ago the in re: Medley
11 opinion that Justice Breyer cited is from the 19th century.
12 Solitary confinement has been around for a long time. And
13 people have studied it for a long time. So there's a vast
14 literature on solitary confinement and related psychological
15 situations or contexts.

16 That second article that's listed here on this
17 slide is the article that we've been talking about that that
18 string cite came from, the 2013 article. Stewart Grassian,
19 a psychiatry professor at Harvard, has done research on it
20 and written about and has a very good literature view that
21 he's published in the Washington University Journal of Law
22 and Policy. That's the third listed.

23 And then Peter Shaw Smith, who is a Scandinavian
24 researcher, summarized the research that's been done not
25 only in the United States but also Europe and in Scandinavia

1 where they also have had solitary confinement and studied
2 solitary confinement carefully. So his literature review,
3 both those last two are 2006 literature reviews. Again,
4 there's been research even done since 2006 on this topic.

5 Q. And are the empirical findings, that are set forth in
6 these studies, in terms of the effects of solitary
7 confinement, are they theoretically coherent?

8 A. Yes. It's one of the things that has emerged over the
9 last decade and a half. The notion that there are sound
10 theoretical reasons that explain the harmful or deleterious
11 effects of solitary confinement.

12 A kind of deeper theoretical understanding of what
13 may be obvious, but it's also always nice to have
14 theoretical support for a proposition that seems otherwise
15 obvious or common sense. And I've listed the two, the two
16 interrelated notions here.

17 In the last 10 or 15 years there has been a
18 tremendous amount of research, broad research in social
19 psychology underscoring the importance of social contact and
20 social connectedness to human health and well-being. You
21 may, you may be familiar with the phrase, we're social
22 animals.

23 Well, in the last 10 or 15 years social
24 psychologists have actually documented how extensively and
25 intensively we are social animals. How fundamentally our

1 contact is with other people, not just to derive joy and
2 happiness from contact with other people, but really our
3 sense of self depends on our interactions with other people.
4 Some social psychologists have argued, as a result of this
5 research, that there's a fundamental human need to be able
6 to connect to others.

7 One of my colleagues has written a book called
8 Wired to Connect, by which he means to suggest that human
9 beings are, in fact, innately structured, neurologically
10 wired to connect to other people.

11 And one of the things that underscores the
12 importance of this is what happens when you look at
13 circumstances or situations with where people are denied the
14 opportunity to do that or, for whatever reason, aren't able
15 to connect to other people.

16 So there's been a lot of research on social
17 isolation and social exclusion and loneliness in settings
18 outside of prison.

19 So you're looking now at particularly aging
20 populations where people have lost their connections to
21 other people. They don't, it's not, they are not as
22 comfortable interacting with other people. Or people who
23 are placed in settings maybe even in homes or other
24 institutions, but penal institutions, but places where it's
25 difficult for them to have normal social interaction with

1 others.

2 And what researchers find is there is a tremendous
3 negative cost, both psychologically and physically. So that
4 people who are isolated and lonely actually get sick more
5 often. And they also have higher mortality rates that
6 researchers have been able to connect to their social
7 isolation.

8 Now, these are studies that are done outside of
9 the prison setting. But it provides a kind of theoretical
10 framework for what solitary confinement researchers have
11 uncovered over the decades, which is that because solitary
12 confinement imposes social exclusion and loneliness in, as
13 comprehensive and pejorative a way as possible, it's not
14 surprising that it has the kind of negative effects that
15 we've been able to identify given what we know about
16 isolation and loneliness in the world at large under
17 conditions much less onerous, much less comprehensively
18 isolating than exists in solitary confinement.

19 Q. So that's the way it operates outside of prison. Have
20 you tested that theory in the context of the prison
21 environment, and specifically the environment of prisoners
22 who have been isolated?

23 A. Yes. I've done really research over -- I started doing
24 the work in late 1970's. And I've continued do it up, you
25 know, up until the present time.

1 I've done it in a variety of different ways, but
2 one of the main ways I've done it is to conduct long,
3 systematic interviews, structured interviews with prisoners
4 who are in isolation units in different parts of the
5 country.

6 Oftentimes, I'm able to select these, the
7 prisoners that I interview randomly so that I can be assured
8 that it's a random or representative sample of the prisoners
9 who are in these units. And then I'm able to interview them
10 for an hour or so about -- with a specific list of questions
11 designed to understand the nature of the experience, what
12 they are going through, what's happening to them, how
13 they've changed as a result of being in isolated
14 confinement.

15 Not everybody reacts in exactly the same way, but
16 as I've said here, virtually all of the people suffer from
17 some form of distress and psychic pain. Very, very rarely
18 does someone tell you that they are not bothered by this
19 experience, that it does not hurt them, that they are not
20 feeling distressed or pain of some sort.

21 There are -- the high prevalence of symptoms of
22 severe stress and isolation related trauma, I'll show you
23 some numbers on that in a moment. So that high prevalence
24 addresses the issue of how many people feel this way.

25 So it's not just, as you'll see in a minute, it's

1 not just a few people, it's the overwhelming majority of
2 people who are suffering from a whole range of these stress
3 related and trauma related symptoms.

4 And then, because solitary confinement has been
5 used in the United States with increasing frequency, really
6 up until relatively recently, at which time, beginning a few
7 years ago, I think there's been a, a reflection on whether
8 or not we've overused this. But it was unreflectively used
9 for a couple of decades in the United States.

10 And what I began to encounter were people who were
11 in solitary confinement for relatively long periods of time.
12 So we're not talking about people who now are, maybe have
13 spent a month or even a few months or a year in solitary
14 confinement. But I've encountered populations, or at least
15 individuals within populations in solitary confinement, who
16 have been in there for years, several years. Sometimes a
17 decade. Sometimes two decades.

18 And what I have seen in those people is something
19 a little bit different than simply the prevalence of
20 symptoms of stress and trauma. But, rather, it is the
21 consequence of people trying to adapt to or adjust to living
22 in a world without people.

23 It's the long-term consequence of what happens
24 when we have to -- that wiring to connect that we have,
25 begins to atrophy. So you have to structure your life, your

1 world without human beings in it.

2 And, again, apropos what you asked me earlier, do
3 I mean literally no one. I mean no meaningful social
4 contact with people. And that's an abnormal situation to
5 place people in.

6 You can argue about whether or not it's justified
7 in some circumstances or not, but it's abnormal. No one
8 would dispute it's abnormal for people to live without the
9 presence, the normal meaningful contact with others.

10 So how do we adjust to or adapt to living for a
11 long period of time in an abnormal situation? We began to
12 make abnormal adaptations to that abnormal situation so that
13 the abnormal becomes normal.

14 People get used to not being around other people.
15 And after getting used to it it doesn't, it doesn't mean
16 they are not in pain about it, but they just assume that
17 there won't be other people in their life.

18 And then, after that happens, people begin
19 paradoxically, to become aversive. They don't want to be
20 around people. They, even though they are isolated from
21 people they isolate themselves even further. And that's
22 what I've described a form of social pathology, that is, it
23 is a pathological human adaptation to an abnormal
24 pathological situation.

25 Q. You said you had discussed the numbers in terms of the

1 prevalence. And I think your slide that we have here does
2 that.

3 A. Yes. So this is a, this is a summary of some of the,
4 some of the data that's reported in the 2003 article that
5 we've talked about a couple times already. These are data
6 that I collected in a study that I did some years ago in an
7 isolation unit in California. I've done this kind of study
8 elsewhere in the United States. And these numbers are
9 roughly comparable in each one of those institutions.

10 In fact, I had an opportunity to go back to that
11 particular facility and basically redo this study and came
12 up with many of the same exact results even though it was 20
13 or so years later.

14 And what you can see is that the symptoms of
15 stress related trauma are experienced by very high numbers
16 of people. Now, this was a sample of people who were
17 randomly selected. These were not prisoners who were
18 complaining or they were not prisoners whose lawyers brought
19 to me because they had issues. This is a representative
20 sample of prisoners who were in that unit at that time.

21 And you can see over 50 percent of them were
22 experiencing one or another of these forms of trauma. And
23 some of the stress related symptoms were being experienced
24 by nearly everybody, including anxiety, troubled sleep and
25 feelings of an impending breakdown.

1 Q. And the next slide, please?

2 A. And then there were, again, in the same study, same
3 group of people, a hundred randomly selected, so they were
4 representative of the general population of people in that
5 isolation unit. And these are what I've characterized and
6 they are characterized in the literature as the
7 psychopathological effects of isolation.

8 These are a bit more extreme, but these are the
9 kinds of thing that happen to people, not just under stress,
10 but when they are under the kind of stress that people are
11 in when they are in isolation units.

12 And so you can see, again, very high prevalence
13 rates. Most, in some instances nearly all of the prisoners
14 are experiencing these things, sometimes experiencing them
15 in very deep and profound ways. You know, including things
16 like chronic depression, three out of four people talking
17 about just feeling hopeless and helpless. More than three
18 out of four of them withdrawing that paradoxical effect of
19 being isolated, wanting to be around people, but then not
20 being comfortable around people and so pushing people even
21 further away withdrawing further into yourself.

22 The only, the only symptom of psychopathology
23 reported by less than half of the people in this study were
24 hallucinations and suicidality or thoughts of self harm.
25 But even those things were experienced in this study by a

1 relatively high number of people. A quarter of the
2 prisoners I interviewed said that they had thought about,
3 thought seriously about taking their own lives.

4 THE COURT: How do you correct for the
5 psychological impact of incarceration on all prisons?
6 Right, because the general population probably has some of
7 these troubles too.

8 THE WITNESS: They do. And so we have -- I didn't
9 show you -- we have data that show for the general
10 population much, much, as you would expect, much, much
11 lower. And then for prisoners in general, again, higher
12 than the general population, but much lower than the
13 prevalence rates for people who are in solitary confinement.

14 So other people, I've done some of that research
15 myself, but there are other people who have studied what
16 happens to people in mainline prison populations. And those
17 prevalences are nowhere near as high.

18 Q. Now, doctor, you talked about your experience with
19 people who have been in these isolation conditions for long
20 periods of time. And I want to focus just for a couple
21 minutes on definitions of longer term isolation.

22 So if we could have the next slide and then the
23 next slide as well?

24 A. So longer-term isolation, when I use this term, you
25 said what do you mean by longer-term isolation. So I

1 thought I would try to define it in, with reference to how
2 other people, other organizations have defined it.

3 Obviously longer-term or long-term is a relative
4 comparative term. So what do people who have opined about
5 solitary confinement think is long-term.

6 So I've given you several examples here of people
7 who have issued opinions and standards or mandates about the
8 use of long-term solitary confinement.

9 The first one comes from the American Psychiatric
10 Association and separately the Society of Correctional
11 Physicians. So the American Psychiatric Association, I'm
12 sure you know, is the professional organization for the
13 nation's psychiatrists. The Society of Correctional
14 Physicians is a group of physicians who work in prison
15 settings. So these are people who are not only physicians,
16 but whose primary occupation is to work in correctional
17 settings, oftentimes working for correctional institutions.
18 They define solitary confinement that lasts for longer than
19 four weeks as prolonged solitary confinement.

20 The second citation I've given you here is just
21 from something that was issued last year by the United
22 Nations. The United Nations, as you may know, devises and
23 then promulgates what they call standard minimum rules for
24 the treatment of prisoners. These have come to be known as
25 the Mandela Rules, after Nelson Mandela.

1 But just last year they issued the latest version
2 of these. And they prohibit the use of solitary confinement
3 that is indefinite. So any solitary confinement that has no
4 ending point to it is prohibited under the Mandela Rules.
5 And it will also, what they call prolonged solitary
6 confinement lasting more than 15 days, they, the Mandela
7 Rules also prohibit.

8 The American Bar Association has standards on the
9 treatment of prisoners. They mandate, not an absolute
10 ending point, but they do identify as 90 days the interval
11 at which, each 90 days there needs to be a full
12 classification review. But not only that, an individualized
13 treatment plan each 90 days devised in segregation with, as
14 they say quote, a presumption in favor of removing the
15 prisoner from segregated housing. So a treatment plan each
16 90 days, with the expectation that that prisoner will be
17 moved from solitary confinement.

18 And, finally, just a few months ago, the National
19 Commission on Correctional Healthcare issued a position
20 statement concluding that what they called, prolonged
21 solitary confinement, i.e., greater than 15 consecutive
22 days, constituted cruel, inhumane and degrading treatment
23 and is harmful to an individual's health.

24 So these obviously are examples of what certain
25 bodies or organizations that have considered this issue have

1 considered either long-term or prolonged.

2 In the United States we deal typically with longer
3 periods than that. But just so you can get a framework for
4 what some of the evolving standards look like in terms of
5 the length of time people regard as problematic, harmful or
6 in the case of the NCCHC cruel, inhuman and degrading.

7 Q. Who is on this National Commission on Correctional
8 Healthcare and what role do they play in the correctional
9 system?

10 A. It's actually a prestigious body of correctional
11 healthcare administrators and physicians, and including
12 mental health professionals, who actually certify
13 correctional healthcare in systems all around the country.

14 So you may know that the American Correctional
15 Association does this as well. And, but the NCCHC also is a
16 body that evaluates the quality of correctional healthcare
17 and mental healthcare around the country.

18 And correctional institutions apply for
19 certification either from the American Correctional
20 Association or from this organization or both.

21 Q. Before we turn to your analysis of the federal death
22 row, could you just elaborate a little on this idea of
23 social pathologies of long-term isolation, which I think on
24 the next slide you have summarized?

25 A. Sure. Again, this is based on the notion that somebody